

**FLOOD CONTROL INTERLOCAL AGREEMENT
BETWEEN HAYS AND TRAVIS COUNTIES**

This Interlocal Agreement (this "Agreement") is made and entered into by and between Hays County, Texas, and Travis County, Texas, hereinafter collectively referred to as the "Parties" or the "Counties," upon the premises and for the consideration stated herein.

Recitals

1. The Parties desire to partner on the identification, evaluation, financing, design, construction, maintenance, and operation of flood control projects and flood risk mitigation solutions anywhere within the Parties' respective jurisdictions that are mutually beneficial to their citizenry (each, a "Project," and collectively, the "Projects").
2. The Parties, through their respective governing bodies, are each authorized to adopt floodplain regulations within its respective jurisdiction designed to promote the public health, safety, and general welfare of their citizenry.
3. Pursuant to the authority granted to them by the Texas Legislature in Sections 16.3145 and 16.315 of the Texas Water Code, the Parties, through their respective governing bodies, are each authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:
 - (A) Making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;
 - (B) Guiding the development of proposed future construction, where practicable, away from a location which is threatened by flood hazards;
 - (C) Assisting in minimizing damage caused by floods;
 - (D) Authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;
 - (E) Engaging in floodplain management and adopting and enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;
 - (F) Declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the director, or

whomever the director of the Federal Emergency Management Agency ("FEMA") designates, of such property;

- (G) Consulting with, giving information to, and entering into agreements with FEMA for the purpose of:
 - (i) Identifying and publishing information with respect to all flood areas, including coastal areas; and
 - (ii) Establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;
- (H) Cooperating with the FEMA director's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;
- (I) Taking steps, using regional, watershed, and multi-objective approaches, to improve the long-range management and use of flood-prone areas;
- (J) Purchasing, leasing, and receiving property from the FEMA director when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Federal Emergency Management Agency or other appropriate legal representative of the United States Government;
- (K) Requesting aid pursuant to the entire authorization from the Texas Water Development Board ("TWDB")
- (L) Satisfying criteria adopted and promulgated by TWDB pursuant to the National Flood Insurance Program;
- (M) Adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the FEMA director;
- (N) Adopting more comprehensive floodplain management rules that the political subdivision determines are necessary for planning and appropriate to protect public health and safety;
- (P) Participating in floodplain management and mitigation initiatives such as the National Flood Insurance Program's Community Rating System, Project Impact, or other initiatives developed by federal, state, or local government; and
- (Q) Collecting reasonable fees to cover the cost of administering a local floodplain management program.

- 4. The Parties are each authorized pursuant to Chapter 561 of the Local Government Code to, among other things:

- (A) Acquire public or private real property, including easements and rights-of-way, for the purpose of building canals, levees, and other improvements to provide for flood control and water outlets, including making acquisitions therefor, under certain circumstances, by exercising their respective rights of eminent domain;
 - (B) Contract with a governmental unit, including a county, municipality, or other political subdivision, to jointly acquire a right-of-way or to jointly construct or maintain a canal, drain, levee, or other improvement for the purpose of providing flood control or drainage as it relates to flood control or for the purpose of providing and maintaining necessary outlets.
 - (C) Contract with the federal soil conservation service, a state soil conservation district, the state extension service, a conservation and reclamation district, a drainage district, a water control and improvement district, a navigation district, a flood control district, a levee improvement district, or a municipality as provided by Section 256.006, Transportation Code, for the purpose of carrying out plans and programs for flood control and soil conservation.
5. The Parties intend to conform this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001 et seq., including the following:
- (A) This Agreement has been duly authorized by the governing bodies of each entity.
 - (B) Any monies expended under this Agreement shall be paid with current funds.

NOW, THEREFORE, the Parties agree as follows:

1. The Parties agree to:
- (a) Collaborate on studies to identify and evaluate the most effective and efficient Projects;
 - (b) Devise a mutually agreed to list of Projects to pursue;
 - (c) Devise a mutually agreed to sharing of financial and managerial responsibilities either on a project-by-project basis or a bundle of Projects;
 - (d) Assist each other in soliciting input, if not partnership from the cities of Dripping Springs, Buda and Austin;
 - (e) Assist each other in soliciting input if not partnership from other governmental entities (including federal, state, and local entities, as appropriate) and private entities;
 - (f) Explore options to utilize corporations created by local governmental entities to effectuate the Project goals;

- (g) Collaborate on the limitations and use of eminent domain authority for the accomplishment of the Projects; and
 - (h) Hold joint public meetings between representatives of the Parties at least once annually regarding the list, prioritization, and funding of Projects.
- 2. Specific Projects that the Parties intend to jointly accomplish with respect to the Onion Creek watershed include:
 - (a) Identifying and publishing information with respect to all flood areas;
 - (b) Establishing flood-risk zones in all flood areas and regularly updating estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;
 - (c) Cooperating on Texas Water Development Board studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;
 - (d) Authorizing and engaging in continuing studies of flood hazard areas in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;
 - (e) Cooperating and coordinating in the areas of flood warning, public information and education, emergency response, and post-event recovery; and
 - (f) Collaborating on completing engineering studies and selection of appropriate flood control mitigation projects, including recommendations from the Halff Studies completed for the Onion Creek Watershed.
- 3. Collaboration with Other Stakeholders; Report

The Parties agree to collaborate with other governmental entities and stakeholders, including private entities, to prepare a report by September 30, 2018, that examines whether a flood control district should be established for the Onion Creek Watershed. Among other things, the report will discuss potential funding sources for the district, the geographic scope of the district, governance of the district, powers and duties of the district, and other topics of concern for the stakeholders with respect to floodplain management and protection of the public's health and safety.
- 4. Projects the Parties may pursue under this Agreement

The Parties agree that this Subsection 4 shall not be construed to grant authority to regulate and/or grant contractual standing to oppose activities occurring outside of each Party's respective jurisdiction. Projects the Parties may pursue under this Agreement include:

- (a) Devising programs, plans, and projects to implement structural and nonstructural flood risk mitigation solutions;
- (b) Restoring the natural functions of floodplains;
- (c) Preventing the deposit of silt Pollutants, as defined by Chapter 26 of the Texas Water Code, into navigable stream waters in the state. Removing obstructions from streams and other watercourses, regardless of whether the obstructions are natural or artificial;
- (d) Regulating the flow of surface and floodwaters through amendments to current regulations or adoption of new regulations;
- (e) Providing drainage essential to the flood control project;
- (f) Acquiring, by gift, devise, purchase, or condemnation:
 - (1) Land;
 - (2) A right or interest in land; or
 - (3) Any other form of property interest needed to carry on the work of flood control;
- (g) Selling, trading, or otherwise disposing of land or other property, or a right in property, no longer needed for a flood control project or flood control purpose;
- (h) Using the bed and banks of a bayou, river, or stream subject to the requirements of all State and Federal Regulations;
- (i) Lawfully entering on land to make or examine a survey in connection with a flood control plan or Project for any other authorized purpose; and
- (j) Overflowing or inundating any public lands or public property, and requiring the relocation of a road or highway, in the manner and to the extent to which the Parties are authorized, subject to the state agency with jurisdiction over the land or property;
- (k) Acquiring and utilizing latest technology for measuring and monitoring flood flows and erosion to provide accurate data for flood control projects (e.g. flood gages, drones, LIDAR);
- (l) Establishing streamlined permitting processes and reduced permit fees to expedite the design and construction of mutually beneficial flood control projects;
- (m) Establishing joint authority to perform flood recovery work in areas approved by the parties;
- (n) Sharing resources for the planning, construction, operation and maintenance of flood control structures that cross county lines; and
- (o) Jointly seeking land use controls in flood prone areas of the respective jurisdictions.

5. This Agreement does not require any Party to contribute or reimburse funds to any other Party. Any endeavor involving reimbursement or contribution of funds among the Parties or any third party will be handled in accordance with applicable laws, regulations, and procedures.
6. Liability. To the extent allowed by Texas law, the Parties agree that each entity is responsible for its own proportionate share of any liability for its negligent acts or omissions. Nothing in the MOU shall be construed as a waiver of Sovereign or official immunity by either party. As such immunities apply to third parties.
7. Miscellaneous.
- (a) Term. This Agreement shall be effective from and after the date of execution and continues through September 30 of the next calendar year following the effective date of this Agreement (the "Initial Term"). After the end of the Initial Term, this Agreement automatically renews each year on October 1 for an additional one-year term beginning October 1 and ending September 30 unless sooner terminated by the mutual written agreement of the Parties.
- (b) Termination. A party may terminate its participation in this Agreement with 90 days' notice to the remaining Parties to the Agreement.
- (c) Notice. Any notice given hereunder by a party to the others shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

HAYS: Hays County Judges Office

111 E. San Antonio Street, Suite 300

San Marcos, TX 78666

HAYS COUNTY:

Clint Garza (or successor)

Director of Development and Community Services

P.O. Box 1006, San Marcos, Texas 78667

WITH COPY TO: Mark D. Kennedy (or successor)

General Counsel
111 E. San Antonio Street, Suite 202
San Marcos, TX 78666

TRAVIS COUNTY: The Honorable Sarah Eckhardt (or her successor)
Travis County Judge
P. O. Box 1748
Austin, Texas 78767

AND: Steven M. Manilla, P.E. (or successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

WITH A COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767
File No. 291.777

(d) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.

(e) Entire Agreement. This Agreement contains the complete and entire Agreement between the parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting joint performance under of the Agreement. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the parties hereto. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners

Court of Travis County, Texas. The recitals set forth above and the attached exhibits are incorporated herein.

- (f) Other Instruments. The Parties hereto covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.
- (g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (h) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefor from current revenues available to the paying party.
- (i) Non-Exclusivity. This Agreement does not create and should not be regarded as an exclusive arrangement between the Parties to the Agreement.
- (j) No partnerships. This Agreement shall not make or be deemed to make any Party to this Agreement an agent for or the partner of any other Party.
- (k) Attorney Fees. If any action at law or equity including any action for declaratory relief is brought to enforce or interpret the provisions of this Agreement, each Party to the litigation shall bear its own attorney's fees and costs.
- (l) No Third-Party Beneficiary. This Agreement is not intended to and shall not be construed to create any rights or remedies in any person or legal entity that is not a Party to it and the Parties are not waiving any defense or immunity to which they are entitled against any person or legal entity that is not a party to this Agreement.
- (m) Counterparts. This Agreement may be executed in separate counterparts, each to be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

HAYS COUNTY, TEXAS

By: Bert Cobb

Bert Cobb, M.D., County Judge

Date: 5/2/2017



ATTEST: Liz Q. Gonzalez
Liz Q. Gonzalez, Hays County Clerk

TRAVIS COUNTY, TEXAS

By: Sarah Eckhardt

Sarah Eckhardt, County Judge

Date: APR 20 2017

ATTEST: Dana DeBruin
Name:
Travis County Clerk